



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/152213

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 23, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on October 22, 2013, at Kenosha, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to a May 1, 2013 imposition of a BadgerCare+ (BC+) restrictive reenrollment and whether Petitioner's BadgerCare+ (BC+) was correctly discontinued in October 2013 as a restrictive reenrollment resumed after a period of BC+ eligibility.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner was a recipient of BadgerCare+ Medicaid in early 2013. On March 1, 2013 he reported employment. Income was verified at approximately \$5000.00 per month. Because of Petitioner's

income he was notified that both he and his spouse had a BC+ premium due for April 2013 in the amount of \$335.00 per month.

3. Petitioner did not pay a premium for April 2013 and, on April 17, 2013; the agency sent a notice indicating that BadgerCare+ was being terminated effective May 1 for failing to pay a premium. The notice indicates that if the premium was not paid, a restrictive re-enrollment period of 12 months would be imposed. Appeal rights were included and noted June 17, 2013 as the appeal deadline. The Division of Hearings and Appeals did not receive a hearing request.
4. In June 2013 Petitioner reported that he was not working. Because he did not have income he no longer had a BC+ premium and he and his spouse were again eligible for those BC+ benefits.
5. In September 2013 Petitioner again reported employment. The income was verified at \$3360 per month. This income took Petitioner back into premium status and he and his spouse were notified that effective October 1, 2013 BC+ would close as the restrictive re-enrollment resumed based on the failure to pay the premium earlier in the year.

### DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the effective date of the agency decision. §49.45(5)(a), *Wis. Stats.* This appeal was not filed on time with respect to the premium notice nor the May 1, 2013 case closure thus the Division of Hearings and Appeals not have authority to address those issues. The appeal is, however, timely as to the denial of BadgerCare+ in October 2013 because of the continuation of a restriction reenrollment period.

Petitioner had been receiving medical assistance under BadgerCare Plus, which covers children under 19 and their parents. *Wis. Stat. § 49.665.* Parents, stepparents and caretaker relatives with income over 133% of the Federal Poverty Level (FPL) are required to pay a BC+ premium. *BadgerCare+ Eligibility Handbook (BEH), §19.1.* For a group of 5 the 133% threshold is \$3055.68. *BEH, §50.1.*

The agency ended Petitioner's benefits as of May 1, 2013 because he failed to pay the premium due by that date. The program's rules require recipients to pay a premium by "the 10th of the month prior to the month for which the premium is required." *Wis. Admin. Code § DHS 103.085(1)(d)2.* If a person fails to pay the premium by the end of the month for which it is due, benefits end on the last day of that month. *Wis. Admin. Code § DHS 103.085(1)(d)3.* Those whose benefits end because they did not pay a premium cannot reenroll for 12 months unless they did not pay because of circumstances beyond their control. These circumstances include:

- a. A problem with an electronic funds transfer from a bank account to the BadgerCare program.
- b. A problem with an employer's wage withholding.
- c. An administrative error in processing the premium.
- d. Any other circumstance affecting payment of the premium which the department determines is beyond the group's control, but not including insufficient funds.

*Wis. Admin. Code, § DHS 103.085(3)(b)1.*

Further, the BadgerCare+ program premium regulation states:

#### 19.8.1 Non-Payment Introduction

The failure to pay a premium does not affect the eligibility of any person in the household who does not have a premium obligation. If an individual or family with a premium

obligation fails to pay the premium by adverse action of the benefit month, BC + will close for those individuals who owed a premium. If those individual(s) are children under age 19, they are not eligible for six calendar months following the date on which their coverage terminated, unless there was good cause. If those individuals are adults age 19 and older, they are not eligible for 12 calendar months following the date on which their coverage terminated, unless there was good cause.

If a late payment is received by the end of the month after the benefit month, lift the Restrictive Re-enrollment Period (RRP) The period of time an individual is not eligible to enroll in BC+ due to non payment of a premium. (19.11) and reinstate eligibility.

...

*BEH, §19.8.1.*

Once a person is in restrictive re-enrollment, the entire penalty period must be served unless household income drops below the level for which a premium is required. If income rises to the premium level again, the penalty period resumes. *BEH, §19.11.2.*

Petitioner would like BadgerCare+ Medicaid restored but given the regulatory framework detailed above there is no legal basis to order that restoration.

### **CONCLUSIONS OF LAW**

1. That the Division of Hearings and Appeals has no legal authority to make a decision on the merits of the April 1, 2013 BadgerCare+ premium nor the May 1, 2013 case closure as Petitioner's appeal was not timely filed for those issues.
2. Petitioner's appeal is timely with respect to the resumption of the BadgerCare+ restrictive re-enrollment in October 2013.
3. That the agency correctly discontinued Petitioner and his spouse's BadgerCare Plus program as of October 2013 as an income increase again put the household adults over the premium income limit and the restrictive re-enrollment was required to resume.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of December, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 13, 2013.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability